

No. 9153

United States
Circuit Court of Appeals
For the Ninth Circuit 20

ROSE PACKARD SHYVERS,

Appellant,

vs.

THE SECURITY-FIRST NATIONAL BANK OF
LOS ANGELES,

Appellee.

Appellant's Supplemental Brief

Upon Appeal from the District Court of the United States for
the Southern District of California, Central Division.

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The Question

Since the debtor has real property in England and therefore beyond the jurisdiction of the United States Courts, how can they administer this foreign property? And since Section 75 of the Bankruptcy Act relating to Farmers' Compositions contemplates and requires that all the debtor's property be subjected to the jurisdiction of the Court, how can the debtor with real

property in England be within the contemplation of the statute?

After what we believe to have been a thorough investigation of the authorities, we regret to say that we have been unable to find anything excepting what has already been presented in our original brief and in the argument which can answer the questions presented above.

We concede, of course, that real property in England belonging to the debtor could not be administered by the Bankruptcy Courts of this country because beyond its jurisdiction. However, we do not believe that such fact is decisive of appellant's rights.

In the first place, Section 75(1) provides that the debtor is to be deemed a resident of the county in which the enumerated operations are carried on by her. This makes her, by legislative fiat, a resident of Santa Barbara County. That she actually resides in London or New York is immaterial. In one sense, and, perhaps, in the proper sense, this statement is a complete answer to the questions raised.

However, we concede that there may be something deeper or more fundamental and beyond this legislative fiat. It may be said that, notwithstanding, there is an assumption in Sec. 75 that the debtor is a resident of the United States and that her property is wholly therein.

To do this, however, something must be added to the legislative fiat. No exception is made against an alien or mere non-resident of the United States or one who owns property beyond its jurisdiction.

Next, it is to be observed that the statutes involved in this appeal are part of the general bankruptcy act and under that act it is provided by Section 2a(1) that Bankruptcy Courts have power to “Adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, *or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions;*”

Since this provision which applies in ordinary bankruptcies contemplates proceedings by persons who are beyond the jurisdiction of the Court as long as they have property within its jurisdiction, it seems to us it cannot be claimed that such residence beyond the territorial limits of the United States can make any difference; and the fact that such a non-resident of this country owns property in some foreign country, it seems to us, can make no difference because even a resident of the United States might own such property,

and such real estate in a foreign country, belonging to a resident of this country, could only be controlled by acting upon the person of the bankrupt.

And if the fact that a bankrupt owns real estate in a foreign country is decisive, then a non-resident in this country who owned no real estate there would be entitled to the benefits of our bankruptcy laws while such a non-resident who owned additional assets by way of real estate in foreign countries would not be entitled to its benefits.

We have only been able to find some cases stating that the bankrupt's property "within the United States" is within the jurisdiction of the bankruptcy court, implying thereby that property beyond our territorial limits is not within such jurisdiction. But these citations would be of no value. We have been able to find no cases in which any property outside the jurisdictional limits of the United States was administered in bankruptcy or any points of law with reference thereto decided or in controversy.

And finally subdivision (n) of our Section 75, specifically involved in this proceeding, expressly provides that in proceedings under this Section, the jurisdiction and powers of the Courts, etc., shall be the same as if a voluntary petition for adjudication had been filed and decree of Adjudication entered. (See this subdivision and subd. (r) quoted in full respectively on pages 3 and 16 of our opening brief.)

This is the equivalent of saying, as we view it, that in proceedings under Section 75 the Court has power to proceed in cases where the debtors “do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions” as provided under Sec. 2a(1).

Respectfully submitted,

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